

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.2915 of 2013(O&M)

Reserved on:06.01.2015

Date of decision:21.01.2015

Kuldish Kaur

.....Petitioner

Versus

Harish Kumar Randev & others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Jagnahar Singh, Advocate, for the petitioner.

Mr.Divanshu Jain, Advocate, for respondent No.1.

\*\*\*\*

**G.S.Sandhawalia J.**

Challenge in the present revision petition, filed by the petitioner-tenant, is to the order dated 15.02.2013, whereby the Rent Controller, Kapurthala has dismissed the application, filed under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') for leave to defend and allowed the application for ejectment filed under Section 13-B of the Act.

The Rent Controller, vide the impugned order, came to the conclusion that respondent No.1 was the owner of the property on the basis of a decree passed on 09.02.1995, in his favour. The present petitioner admitted that she was residing in the premises since Surinder Kaur, her mother, was a tenant under Kamlawati who was the grandmother of respondent No.3. The said respondent had a British passport and thus, was a Non Resident Indian and there was no ground to grant leave to defend merely because the said respondents had another premises belonging to her

parents. Accordingly, being the owner of the property for the last 5 years, he was competent to file ejectment petition and merely because he has not come back to India would not be a ground to reject the application filed under Section 13-B of the Act.

Counsel for the petitioner has submitted that the ownership of the respondent was a question mark and therefore, the leave to contest should have been granted as a triable issue has been raised and secondly the boundaries were not matching as per the decree and the Rent Controller was in error in granting the relief. It was also contended that the issue regarding foreign passport holder is pending consideration before the Apex Court.

Counsel for respondent No.1, on the other hand, has submitted that the said issue of ownership was never raised in the application filed under Section 18-A and therefore, in the absence of any such issue having been raised, fresh argument cannot be raised before this Court. Similarly, it is submitted that the issue of foreign passport holder was not raised and has, accordingly, placed reliance upon the judgment of the Apex Court in **Baldev Singh Bajwa Vs. Monish Saini 2005 (12) SCC 778.** It is also submitted that it has already been held categorically that having returned is not to be the permanent intention and has placed reliance upon the judgment of this Court in **Sohan Lal Vs. Swaran Kaur 2003 (2) RCR (Rent) 407** to submit that it has to be construed harmoniously.

The facts show that respondent No.1 filed the petition seeking the ejectment of the present petitioner along with respondents No.2 & 3, through his real brother. The claim was on the basis of a decree passed in his favour on 09.02.1995 in Civil Suit No.15 of 18.01.1995 titled *Harish Kumar Vs. Kamlawati*, who was none else but his paternal grandmother. It

was pleaded that he was person of Indian origin settled permanently in the United Kingdom and holding a British passport, issued on 20.12.2005 and thus, being a Non Resident Indian, who had gone to take up employment and wanting to return to Kapurthala and requiring the residential building as he had no other residential building except the one in question and neither he had vacated any such building. The petitioner was alleged to be the legal heir of one Swaran Kaur, who was the tenant under Kamlawati @ ₹100/- per month, in the property described in the cause title. On account of Swaran Kaur having expired, she was the tenant along with the other legal heirs, on the same terms and conditions.

An application for leave to contest was filed admitting that Swaran Kaur was the mother of the applicant-petitioner herein and that she was tenant in the property in question under Mahesh Kumar, son of Som Nath Randev. She had died interstate, leaving behind the petitioner and respondents No.2 to 5 as her legal heirs. The applicant-petitioner, Gurdeep Kaur was a widow as her husband was killed by the militants during militancy in Punjab and she is residing in the house in question. Respondent No.1 did not need the house for his personal use and he had a parental house in Kapurthala and neither he intend to come to Kapurthala and therefore, the application had been filed through the attorney and it was only a mere desire. The house in question was 100 years old and neither it had been got washed nor repaired.

The application was contested by respondent No.1 on the ground that Swaran Kaur was not a tenant with Mahesh Kumar, son of Som Nath Randev, rather she was a tenant under Kamlawati, widow of Som Nath Randev. It was denied that he had any parental house to live in and that he

did not need the house in question and that he did not intend to settle in India.

The petition, as noticed, has been allowed on the grounds mentioned above, by the Rent Controller.

The argument of counsel for the petitioner that respondent No.1 was not the owner of the property and therefore, a triable issue arose, is without any basis. In the application, filed under Section 18-A, the factum of ownership, as such, has not been questioned. The status of the petitioner being the legal representative of the original tenant, namely, Swaran Kaur, is admitted. The plea taken is that the mother of petitioner No.1 was a tenant under Mahesh Kumar, son of Som Nath Randev. The factum of the status of tenant is, thus, not denied. Respondent No.1 has based his title on the suit for declaration which was filed by him against his grandmother, Kamlawati, widow of Som Nath. The suit was decreed in his favour wayback on 09.02.1995 whereas the present petition was filed on 29.11.2008, under Section 13-B, i.e., 13 years after the decree had been passed in his favour. The issue of ownership, thus, is not such a triable issue as contended by counsel for the petitioner-tenant. The factum of the property being owned by the family of respondent No.1, it is not disputed that the status of the petitioner is anything more than that of a tenant in the premises.

The description of the property in the suit for declaration also goes on to show that on the East, there is a road and on the West, is a house of Chaman Lal wherein in the North, there is a house of Surjan Singh and on the South, there is a house of Purshotam Lal, which is situated in Panj Mandir, Kotwali Road, Kapurthala and therefore, there is no such dispute

regarding the boundaries varying from the ones in the decree or that the ownership of respondent No.1 was regarding a different property. Even otherwise, the said issue was never raised in the application, filed under Section 18-A of the Act.

It is settled principle of law that the Rent Controller is only to adjudicate upon the issues and has to grant leave to contest on the basis of the affidavit filed. It has been so held by a three Judges Bench of the Apex Court in **Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal 1982 (3) SCC 270.** The affidavit has to disclose some triable issues and in the absence of the same, the application under Section 18-A of the Act, for granting leave to defend cannot be allowed, on the asking. Only a *prima facie* case is to be made out so that the necessary ingredients of Sections 2 (dd) and 13-B of the Act having fulfilled and in case they have been fulfilled, the order of ejectment is to follow. Reliance can also be placed upon the observations made by this Court in **Sham Lal Kherra Vs. Sudershan Kumar Rao 2011 (4) PLR 656.**

Similarly, this Court in **Amarjit Singh Vs. Amarjit Kaur 2012 (4) PLR 726,** has held that leave to defend is to be within the parameters raised in the application under Section 18-A(4)(5) of the Act. The Rent Controller has, thus, to decide on the basis of cogent and material facts having been placed in support of the leave to contest application. In such circumstances, the issue of ownership and that the decree does not pertain to the property in question, is without any basis and the argument raised is, accordingly, not liable to be accepted and the same is rejected as never having been raised in the application filed under Section 18-A.

The factum of having returned permanently, being the necessary

ingredient has also been rightly rejected by the Rent Controller while placing reliance upon the judgment of this Court in **Kamlesh Devi @ Keshi Vs. Chanan Singh 2003 (1) RCR 726.** In the case of **Sohan Lal** (supra), this Court has specifically held that the right of an NRI to file ejectment petition is not after his return permanently or that the petition should be filed thereafter. The penal clauses of the provisions of the Rent Act whereby the tenant could be put back were taken into consideration to hold as such. Relevant observation reads as under:

“26. The expression 'returns to India' used in Section 13-B of the Act would not necessarily means that he must return permanently or he must file a petition after he has returned to India. It is a ground reality that the time consumed in the litigation is long and a NRI who is a person of Indian origin and owner of the property is not expected to wait all the while for the result of the litigation because once a person comes back to India after burning all his boats and bridges abroad he would cease to be useful for himself or the society or the country he had left. Such an NRI is likely to sit idle after returning to India. A provision has been made in sub-section (2-B) of Section 19 of the Act that an NRI who is owner and who have succeeded in evicting a tenant from a residential building in pursuance to an order made under Section 13-B of the Act, if he fails to occupy such building for a continuous period of three months from the date of such eviction or lets out the whole or any part of such building from which the tenant has been evicted to any person other than the evicted tenant then criminal proceedings in accordance with sub-section (3) of Section 13-B of the Act can be initiated as he is deemed to have committed an offence which is punishable with imprisonment that may extend to six months or a fine which may extend to Rs. 1,000/- or both. The expression 'returns of India' has to be construed harmoniously in the light of the provisions made in sub-section (3) of Section 13-B and sub-section (2-B) of Section 19 of the Act. Therefore, it is not necessary that the

NRI owner of the property must come back to India permanently and then stay in this country waiting for the result of the litigation. It is sufficient that application for ejectment is filed by him or through a general power of attorney because there are sufficient safe-guards provided under sub-section (2-B) of Section 19 of the Act laying down that the vacated premises must be occupied by the NRI owner continuously for a period of three months and if the he fails to do so, then penal action is contemplated. He can also not let out any part or whole building to any person other than the tenant for a period of 5 years nor he can alienate the same.”

The Apex Court in the case of **Baldev Singh Bajwa** (supra) has also held that there is a presumption that the need of the landlord is genuine and a *bona fide* one and heavy burden would lie upon the tenant to the contrary. Relevant observations read as under:

“24. Definition of “Non-resident Indian” (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase “Indian Origin” has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase “origin” refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents

were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2 (dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase “return to India” along with the definition of the “NRI” under Section 2(dd) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

25. When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent

abode. We do not find any substance in the submissions made by the learned counsel that the words “return to India” under Section 13-B of the Act denotes return to India permanently.”

In *Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452*, a three Judges Bench of the Apex Court has held that narrow and constricted meaning cannot be given to Section 13-B and rejected the argument that only one unit could be got evicted by the NRI and it was held that the object of the Act would be frustrated if the whole building could not be got vacated. Relevant observations read as under:

“12. Reliance was placed on the decision of this Court in *Baldev Singh Bajwa v. Monish Saini* [JT 2005 (12) SC 442] where the same question had come up for consideration and it was observed that on a plain reading of the provisions of Section 13-B, it would be obvious that once in a life-time possession is given to an NRI to get one building vacated in a summary manner. It was also submitted that the ownership of the Respondent/landlord in respect of only one building had not been disputed by the Petitioners and the only contention that was raised on their behalf was that each separate tenancy in a building would amount to a separate unit and after exhausting the right of summary possession once, it was no longer available to the NRI landlord to exercise such an option for the second time to a particular building, which contention had been negated by the Courts below.

13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made on behalf of the Petitioners. The interpretation sought to be given to the proviso to Section 13-B(1) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of Section 13-B by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be

accepted.

14. The provisions of Section 13-B of the 1949 Act have been correctly interpreted and dealt with in Baldev Singh Bajwa's case (supra) and in that view of the matter, the Special Leave Petitions must fail and are dismissed. I.A. No.2 of 2006 filed in SLP(C) No.11719 of 2006 by Gurdeep Ram to be impleaded as party in his personal capacity, is also disposed of, accordingly."

The Apex Court recently in **CA No.8410 of 2014** titled *Kamaljit Vs. Sarabjit Singh* decided on 02.09.2014, held that Section 13-B is a beneficial provision, intending to provide speedy remedy to the Non Resident Indians and allowed the Civil Appeal, whereby the Rent Controller had taken the view that the NRI owner had failed to prove that he was the owner of the property in dispute since the sale deeds could not be correlated to the shops in question. It was noticed that the tenancy part was not denied and once that was so, the title of the landlord could not be questioned under Section 116 of the Evidence Act, 1872. Relevant observation reads as under:

"16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property. Section 116 clearly lends itself to that interpretation when it says:

*"116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof,*

*shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”*

Lastly, the contention raised that the petitioner is a British Passport holder and therefore, does not fall within the definition of an NRI since the same issue is pending consideration before the Apex Court, is without any basis. The said issue was specifically raised before the Apex Court regarding the status of persons holding foreign Passport in the case of **Baldev Singh Bajwa** (supra) and it was noticed that the person holding a Canadian Passport and serving in the United Kingdom and having been born in Delhi had migrated to the United Kingdom. It was, accordingly, held that it was not necessary that the person should be a citizen of India and having shifted to a foreign country and because he has held a foreign Passport, he would not be a NRI and the order of the High Court was, accordingly, affirmed by the Apex Court, as reproduced above. In such circumstances, the said argument has got no basis.

Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

21.01.2015  
**sailsh**

**(G.S.Sandhawalia)**  
**JUDGE**